United Nations CAC/COSP/IRG/II/1/1/Add.4*

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
17 January 2018
English
Original: French

Implementation Review Group
Ninth session
Vienna, 4–6 June 2018
Item 2 of the provisional agenda**
Review of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

Page

II. Executive summary 2
Burkina Faso 2

* Reissued for technical reasons on 2 March 2018.
** CAC/COSP/IRG/2018/1.

V.18-00155 (E) 080218 090218

Please recycle

II. Executive summary

Burkina Faso

1. Introduction: overview of the legal and institutional framework of Burkina Faso in the context of implementation of the United Nations Convention against Corruption

Burkina Faso signed the United Nations Convention against Corruption on 10 December 2003 and ratified it on 10 October 2006.

Burkina Faso is a republic. The President of the Republic is the Head of State and of the executive and presides over the Council of Ministers under the terms established by the Constitution. The Prime Minister is the Head of Government. Legislative power is exercised by the National Assembly. Judicial power is exercised by the courts and tribunals.

Burkina Faso has a civil-law system based on the Constitution, which ranks above all other laws. Duly ratified and published treaties or agreements may be applied directly provided that they are sufficient in themselves (art. 151 of the Constitution).

Burkina Faso was reviewed during the first cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (CAC/COSP/IRG/I/3/1/Add.28).

The main national instruments implementing chapters II and V of the Convention are the Constitution, Act No. 004-2015/CNT on preventing and combating corruption in Burkina Faso (hereinafter the "Anti-Corruption Act") and Act No. 016-2016/AN on combating money-laundering and the financing of terrorism in Burkina Faso (hereinafter the "Money-Laundering and Financing of Terrorism Act"), which was adopted on the basis of a uniform law of the West African Economic and Monetary Union (WAEMU).

Other relevant texts are the Code of Criminal Procedure (Order No. 68-7 of 21 February 1968 establishing a code of criminal procedure) and the Code of Civil Procedure (Act No. 22-99/AN of 18 May 1999 on the code of civil procedure).

The main institution in the fight against corruption is the Higher Authority for State Control and the Fight against Corruption (ASCE-LC). Organic Act No. 082-2015/CNT of 24 November 2015 regulates the powers, composition, organization and operation of ASCE-LC.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

In 2013, Burkina Faso established a national anti-corruption policy accompanied by an action plan, both of which were adopted by Decree No. 2013-859/PRES/PM of 3 October 2013. The development, implementation and evaluation of the policy are entrusted to ASCE-LC, the Advisory Board of which includes representatives of civil society (art. 2 of Organic Act No. 082-2015).

As part of its mandate (art. 8 (2) of Organic Act No. 082-2015), ASCE-LC has organized a number of awareness-raising campaigns, particularly in schools and legal settings. However, a lack of consistency was noted in the component relating to the prevention of corruption.

ASCE-LC can recommend the review of legal instruments and administrative measures that relate to the fight against corruption.

ASCE-LC is headed by the Comptroller-General of the State, who is appointed through a competitive recruitment procedure (art. 14 of Organic Act No. 082-2015)

for a non-renewable term of five years. A decree establishing the terms of recruitment has not yet been adopted and the members of the Advisory Board have not yet been appointed. ASCE-LC members are independent of the departments, services and agencies that they monitor (art. 51 of Organic Act No. 082-2015).

Since 2008, the Comptroller-General of the State has submitted to the President of Burkina Faso an annual general report on the activities of ASCE-LC, with a copy sent to the Prime Minister and the President of the National Assembly (art. 18 of Organic Act No. 082-2015). The resulting recommendations are subject to follow-up by ASCE-LC. In addition, ASCE-LC participates, at its request, in reviews by counterpart organizations in other countries of the region.

Burkina Faso is a party to a number of regional and international anti-corruption instruments, including the African Union Convention on Preventing and Combating Corruption and the relevant directives of WAEMU.

Other institutions also contribute to the prevention of corruption, such as the Technical Inspectorate of Services (ITS); the National Financial Information Processing Unit (CENTIF); the National Anti-Fraud Brigade (BNAF); the National Authority against Fraud; the National Ethics Committee; and the Public Procurement Regulatory Authority (ARCOP). Coordination among those institutions is ensured by ASCE-LC (arts. 8 (10) and 9 (9) of Organic Act No. 082-2015), including through the Consultation Framework against Corruption (CCLC).

In addition to those institutions, the media and civil society organizations engaged in the fight against corruption and work in the area of good governance participate in prevention activities.

The budget of ASCE-LC is set under law at 0.1 per cent of the national budget, which should ensure the Authority's independence and adequate funding (art. 59 of Organic Act No. 082-2015). In practice, however, the narrow interpretation of the budgetary provisions results in inadequate budget allocations.

Burkina Faso has informed the Secretary-General of the authority designated under article 6, paragraph 3, of the Convention.

Public sector, codes of conduct for public officials, measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, promotion and retirement of public officials are governed by Act No. 081-2015/CNT on the General Civil Service Regulations. Admission to the civil service takes place through a competitive recruitment procedure (art. 18), the management and control of which are entrusted to the General Recruitment Agency of the State (AGRE). Vacancies are published on the Agency's website. Promotion to a more senior position or grade takes place through a professional examination (arts. 21 and 102).

The right to remuneration, including a salary and a residence allowance, is enshrined in article 36 of Act No. 081-2015/CNT.

Specialized training, including a module on ethics, is required for admission to certain public bodies, such as the judiciary and the body of court clerks. In addition, ASCE-LC has organized several training sessions and awareness-raising campaigns for various ministries, schools and other bodies.

The Electoral Code establishes the eligibility requirements for election to office. Malpractice is established as a ground for exclusion from election to the post of municipal councillor (art. 242). Conviction for a corruption offence may also constitute a ground for exclusion under article 82 of the Anti-Corruption Act.

Candidatures for elected public office and political parties are funded by the State budget. That funding is subject to control by the Court of Auditors (arts. 2, 10 and 13 of Act No. 008-2009 on the funding of political parties and groups). Private funding is not regulated.

Rules on the prevention of conflicts of interest are contained in article 6 of the Anti-Corruption Act and articles 2 and 50 of the Public Procurement Act.

Civil servants are prohibited from exercising any profit-generating activities (art. 40 of Act No. 081-2015/CNT). Certain senior officials and other dignitaries are required to submit regular declarations of interests (art. 7 of the Anti-Corruption Act).

Article 4 of the Anti-Corruption Act requires employers to take into account the principles of integrity, honesty and responsibility in the management of careers. Article 148 of the Statute of the Judiciary provides for the decoration of judges who display integrity.

The Anti-Corruption Act requires public institutions to adopt codes of conduct (art. 5), the monitoring and evaluation of which are entrusted to ASCE-LC (art. 41). However, codes of conduct have not yet been adopted for certain bodies. The human resources departments of the various public institutions ensure compliance with the rules contained in the codes, and apply disciplinary measures if those rules are violated (art. 153 of Act No. 081-2015/CNT).

Burkina Faso has developed its codes of conduct on the basis of the African Charter on Values and Principles of Public Service and Administration.

The Anti-Corruption Act establishes as criminal offences the failure to report acts of corruption (art. 79) and acts of violence against whistle-blowers (art. 77). Helplines and physical mailboxes for reporting acts of corruption have been set up in certain Government departments that are vulnerable to corruption, including reporting to external departments. The draft act on special investigative techniques, which was in the process of being adopted at the time of the country visit, contains provisions aimed at safeguarding the anonymity of whistle-blowers.

Burkina Faso requires only the high-ranking officials and senior officials listed in article 13 of the Anti-Corruption Act to submit a declaration of assets and interests. False declarations and the failure to submit a declaration are punishable (arts. 29 and 30 of the Act).

The declaration of gifts, donations and other benefits is mandatory for all public officials (art. 32 of the Anti-Corruption Act). The acceptance of gifts with a value that exceeds the regulatory threshold is punishable (art. 33 of the Act). Declared items should be handed over to the State and inventoried by ASCE-LC (art. 32 of the Act). However, at the time of the country visit, that system was not yet operational.

In Burkina Faso, judges and prosecutors form a single body. The independence of the judiciary is guaranteed by article 129 of the Constitution.

Judges have security of tenure under article 6 of the Statute of the Judiciary. Prosecutors are subject to the authority of the Minister of Justice under article 8 of that Statute.

In order to take up a position within the judiciary, trainee judges and prosecutors must pass a competitive examination for admission to, and complete a course of training at, the Judicial Training Institute (art. 11 of the Statute of the Judiciary).

Burkina Faso has a code of ethics for members of the judiciary, which was recently revised (2017) and is applicable to both judges and prosecutors. The performance of the duties of a member of the judiciary is incompatible with the performance of any other professional or salaried role, commercial or otherwise (art. 106 of the Statute of the Judiciary). The imposition of disciplinary measures is without prejudice to criminal liability (art. 136 of the Statute). Individuals subject to proceedings may apply to the Disciplinary Board in connection with the conduct of a judicial official (art. 33 of Act No. 049-2015 on the organization, composition, powers and functioning of the High Judicial Council).

Public procurement and management of public finances (art. 9)

The public procurement procedure is centralized and is primarily governed by Act No. 039-2016/AN on the general regulations governing public procurement and Decree No. 2017-049 on procedures for the award, performance and regulation of public procurement contracts and the outsourcing of public services.

Burkina Faso enshrines the principle of the separation of management, control and regulatory functions (art. 8 of Act No. 039-2016/AN).

Contracts for works, the supply of goods, services and outsourced public services are awarded to the lowest bidder following an open tendering procedure (arts. 52 and 53 of Decree No. 2017-049). In exceptional cases, use is made of a restricted tendering procedure (art. 73 of the Decree) or direct contracting (arts. 74 and 75 of the Decree).

An invitation to tender preceded by expressions of interest is the rule for contracts for the provision of intellectual services (arts. 52 and 65 of the Decree).

The threshold values for the award of public procurement contracts are established according to the nature of the service and the type of contracting authority (art. 6 of Decree No. 2017-049). Requests for quotations, introduced by the new regulations as a procurement procedure, constitute a simplified form of invitation to tender (art. 71 of the Decree). Exceptional procedures are set out in article 75 of the Decree.

The publication of invitations to tender is mandatory, under penalty of nullity, in accordance with article 21 of Act No. 039-2016/AN. Invitations are published in the public procurement journal, on the website of the body responsible for ex ante control and, where appropriate, in a WAEMU publication (art. 51 of Decree No. 2017-049).

The legislation of Burkina Faso requires the contracting authority to establish the conditions of the contract in advance of any invitation to tender (art. 48 of Decree No. 2017-049). The meeting at which tenders are opened is public (art. 97 of the Decree).

With regard to dispute settlement, Act No. 039-2016/AN allows preliminary recourse to the contracting authority (art. 38) or directly to a non-judicial body (art. 39). In the absence of a settlement, the first party to take action may bring the matter before the relevant administrative court or an arbitral tribunal (art. 43). An appeal may be lodged against decisions of the administrative court (art. 45).

Act No. 039-2016/AN prohibits personnel responsible for public procurement who have an interest liable to compromise transparency from taking part in the procedure for the award of public procurement contracts (art. 48). Furthermore, Burkina Faso adopted Decree No. 2015-1260 establishing a code of ethics and conduct in public procurement, which requires any official, regardless of his or her hierarchical position, to submit a declaration of interests (art. 54).

Adoption of the budget is governed by Organic Act No. 073-2015/CNT of 6 November 2015 on financial law. Draft laws are prepared by the Minister of Finance for adoption by the Council of Ministers (art. 58 of the Act). They are then submitted to the National Assembly for adoption (art. 60 of the Act). An amending law may be enacted to respond to any possible matter of urgency. Provisions for the transition to the programme budget are gradually being implemented, and the process should be complete by 2019 (art. 115 of the Act).

The Finance Commission ensures the proper execution of finance laws (art. 94 of Organic Act No. 073-2015). Burkina Faso also adopted Act No. 008-2013/AN establishing a code of transparency in the management of public finances, which provides for the regular publication of reports on the implementation of the budget (art. 36).

The financial operations of the State are subject to administrative, judicial and parliamentary control. Administrative control includes internal, concomitant and a posteriori control (art. 82 of Organic Act No. 073-2015/CNT). Parliament may request

the Court of Auditors to conduct any investigations necessary in order to obtain information (art. 95 of the Act).

Burkina Faso is a party to the Uniform Act on the Organization and Harmonization of Enterprise Accounting of the Organization for the Harmonization of Business Law in Africa (OHADA), and uses the accounting system established by that organization.

The general accounting system of the State is established on the basis of those standards (art. 3 of Decree No. 2016-601 on the conceptual framework for State accounting).

Articles 101 to 114 of Organic Act No. 073-2015 establish provisions on liability with regard to the implementation of public budgets.

Public reporting; participation of society (arts. 10 and 13)

The right to information is enshrined in article 8 of the Constitution. In addition, Burkina Faso adopted Act No. 051-2015 on the right to access public information and the administrative documents of all public bodies (art. 3).

Article 52 of Act No. 051-2015 provides for the creation of a national authority for access to public information, responsible for facilitating and monitoring the implementation of the Act. However, that body had not yet been established at the time of the country visit.

Reasons must be given for any refusal to provide access to information (art. 76 of the Act), and refusals may be subject to administrative and judicial remedies (arts. 72 to 82 of the Act).

Furthermore, the dissemination of information to the public is ensured by the Government's spokesperson and through the websites of the 27 ministries.

Freedom of association is guaranteed under article 21 of the Constitution. Associations may be formed freely, without prior administrative authorization (art. 4 of the Freedom of Association Act). Furthermore, civil society is involved in decision-making in the context of the annual consultation and dialogue with the Government.

Representatives of civil society serve on the Advisory Board of ASCE-LC (art. 34 of Organic Act No. 082-2015) and on the Regulatory Board of the Public Procurement Regulatory Authority.

The Anti-Corruption Act requires public institutions to publish information on the organization and functioning of the decision-making processes of the public administration (art. 34).

The National Anti-Corruption Network has organized several events on preventing and combating corruption, including in collaboration with ASCE-LC. It has also published regular reports on the situation with regard to corruption in Burkina Faso, including corruption risk mapping.

ASCE-LC receives anonymous complaints and reports concerning suspected cases of corruption (art. 46 of Organic Act No. 082-2015).

Private sector (art. 12)

Representatives of the private sector serve on the Advisory Board of ASCE-LC. With respect to cooperation between the law enforcement authorities and the private sector, only cooperation with CENTIF is provided for (arts. 5, 12, 14 and 24 of the Money-Laundering and Financing of Terrorism Act).

Burkina Faso has not taken sufficient measures to preserve integrity within private-sector entities.

Burkina Faso has established a national trade and personal property credit register, which can be accessed by the public free of charge (art. 12 of Decree No. 2006-484

on the creation, functions, organization and operation of the national trade and personal property credit register).

Burkina Faso has not taken measures to prevent misuse of the procedures regulating private entities, nor has it taken measures to impose restrictions on the exercise of professional activities by former public officials in the private sector.

Burkina Faso has not taken measures to prohibit the acts contained in article 12, paragraph 3, of the Convention, carried out for the purpose of committing any of the offences established in accordance with the Convention.

Measures to prevent money-laundering (art. 14)

Burkina Faso is a member of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), a regional body similar to the Financial Action Task Force (FATF). Its implementation, in that capacity, of the recommendations of the Financial Action Task Force was assessed in a mutual evaluation report in 2009. The sixth and most recent follow-up report was issued in 2015. CENTIF has been a member of the Egmont Group of Financial Intelligence Units since 2013, and is also a member of the network of financial intelligence units of WAEMU and the Economic Community of West African States (ECOWAS).

The Money-Laundering and Financing of Terrorism Act covers all aspects of money-laundering and, in principle, complies fully with international anti-money-laundering standards, including those of GIABA and WAEMU. The Act establishes a risk-based approach, with three levels of due diligence (simplified, standard and enhanced). A national risk assessment is provided for in article 10 of the Act. At the time of the country visit, that assessment was under way but had not yet been completed.

Under article 1 ("Definitions") (33) of the Act, any offence, even if committed in the territory of another State, may be a predicate offence to money-laundering.

Article 1 (7) stipulates that the oversight authorities are the national or community authorities of the West African Monetary Union (WAMU) and WAEMU that are empowered, by virtue of any law or regulation, to monitor the natural and legal persons referred to in articles 5 and 6 of the Act. The entities subject to obligations relating to combating money-laundering and the financing of terrorism are listed in articles 5 and 6 of the Act. The list includes financial institutions; gambling establishments; persons organizing the sale of precious stones and precious metals; members of the legal profession; and other persons trading in goods, where such trade involves payments made in cash in the amount of five million CFA francs or more. The obligations of the oversight authorities are set out in articles 86 et seq. of the Act.

Verification of the identity of customers and beneficial owners (as defined in article 1 (12)), is provided for in articles 18 and 26 to 31 of the Act. Article 18, paragraph 1, establishes the requirement to systematically verify the identity of the customer and, where applicable, the beneficial owner before entering into a business relationship. Articles 50 to 55 provide for enhanced customer due diligence in certain situations, such as in the context of cross-border correspondent banking relationships and with regard to politically exposed persons. In contrast, articles 46 to 49 establish simplified customer due diligence obligations for low-risk situations. Article 19 establishes the requirement to exercise constant due diligence with regard to business relationships.

Burkina Faso has established a financial intelligence unit, known as the National Financial Information Processing Unit (CENTIF). The legal basis for the Unit, which is an administrative-type financial intelligence unit under the authority of the Minister of Economic Affairs and Finance, is the Money-Laundering and Financing of Terrorism Act. CENTIF has financial autonomy, independence with regard to all matters within its jurisdiction, and managerial autonomy.

In respect of national cooperation, CENTIF may have recourse to contact persons within, inter alia, the police and the gendarmerie (art. 63 of the Act). In addition,

articles 74 and 75 of the Act address national cooperation. Cooperation within the WAEMU community and international cooperation are covered by articles 76 and 77 and by article 78, respectively.

Article 12 of the Act establishes measures for declaring and monitoring the cross-border movement of cash and negotiable instruments. In particular, the physical cross-border transportation of cash and bearer instruments in the amount of 5 million CFA francs (approximately 10,000 euros) or more is subject, upon entry to and exit from national territory, to a written declaration. In respect of real estate transactions, the sale value cannot be paid in cash (art. 14 of the Act). Articles 33 and 34 cover wire transfers.

2.2. Successes and good practices

- The independent budget of ASCE-LC, which must not be less than 0.1 per cent of the national budget (art. 6)
- The participation of ASCE-LC in peer reviews (art. 6)
- The obligation of the authorities to ensure that all vacancy advertisements draw attention to the principles of integrity, honesty, accountability, efficiency and transparency (art. 7)
- The fact that representatives of civil society and the private sector serve on the boards of ASCE-LC and the Public Procurement Regulatory Authority (arts. 10 and 13)
- The adoption of an act on access to information (arts. 10 and 13).

2.3. Challenges in implementation

It is recommended that Burkina Faso:

- Ensure greater coherence in its national anti-corruption policy (art. 5 (1))
- Ensure that ASCE-LC has an adequate budget and thus the necessary material resources and specialized staff; adopt and implement a training plan for ASCE-LC staff (art. 6 (2))
- Adopt the decree establishing the terms of recruitment of the Comptroller-General of the State and the comptrollers of the State; appoint the members of the Advisory Board of ASCE-LC; recruit the necessary staff for ASCE-LC, including verification assistants and investigators (art. 6 (2))
- Establish adequate procedures for the selection and training of individuals for public positions that are considered vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions (arts. 7 (1) (b) and 9)
- Strive to strengthen its system, particularly with regard to multiple roles, in order to better prevent conflicts of interest, and consider prohibiting the candidature of persons convicted of offences established in accordance with the Convention (art. 7 (2))
- Consider regulating the private funding of candidatures for public office and of political parties (art. 7 (3))
- Endeavour to adopt codes of conduct for all public officials and disseminate the content of those codes; continue efforts to adopt the draft act on new investigative techniques (art. 8 (2) and (4))
- Put the asset declaration system into operation; expand the list of persons required to declare their assets to cover all positions vulnerable to corruption; consider reducing the threshold value of gifts (art. 8 (5))
- Adopt an effective and efficient risk management system (art. 9 (2) (d))

- Ensure that the provisions of Act No. 051-2015 on the right to access public information are implemented; adopt legal instruments that enable the national authority for access to public information to fulfil its mandate (art. 10)
- Increase cooperation between the private sector and the law enforcement agencies in order to prevent corruption; promote the development of standards and procedures to ensure the integrity of private entities, including through the prevention of conflicts of interest and the imposition of restrictions on certain former public officials (art. 12 (2) (a) and (e))
- Take measures to prevent the misuse of procedures regulating private entities (art. 12 (2))
- Ensure that all the acts listed in article 12, paragraph 3, are prohibited when such acts are carried out for the purpose of committing an offence established in accordance with the Convention (art. 12 (3)).

2.4. Technical assistance needs identified to improve implementation of the Convention

Burkina Faso indicated that it required technical assistance in the following areas:

- Capacity-building of comptrollers of the State, assistants and investigators in the monitoring and evaluation to be carried out by ASCE-LC (art. 6)
- Technical support for the management of declarations of property and assets (art. 8)
- Conduct of the national assessment of risks relating to money-laundering and the financing of terrorism (art. 14).

3. Chapter V: asset recovery

Burkina Faso has a legislative and institutional framework for asset recovery that complies almost fully with the Convention. However, a significant lack of cases and case law limits the implementation of that framework to legislative compliance with chapter V of the Convention.

3.1. Observations on the implementation of the articles under review

General provision, special cooperation, bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

International cooperation is provided for by the Anti-Corruption Act, the Money-Laundering and Financing of Terrorism Act, Organic Act No. 082-2015 and the relevant treaties, particularly the ECOWAS Convention on Mutual Assistance in Criminal Matters, of 1992. In addition, under article 151 of the Constitution, duly ratified or approved treaties or agreements (including the Convention), once published, take precedence over domestic legislation and can be directly applied.

As a member of the Egmont Group and on the basis of article 114 of the Anti-Corruption Act and article 78 of the Money-Laundering and Financing of Terrorism Act, CENTIF may exchange information both upon request and without prior request. CENTIF uses the Egmont Secure Web.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

As indicated above, provisions governing verification of the identity of customers and beneficial owners are contained in articles 18 and 26 to 31 of the Money-Laundering and Financing of Terrorism Act and in article 43 of Regulation No. 15/2002/CM/UEMOA. Articles 19 and 20 of the Money-Laundering and Financing of Terrorism Act establish the general obligation to exercise constant customer due diligence.

Politically exposed persons are defined in article 1 (44) of the Money-Laundering and Financing of Terrorism Act. That definition includes domestic politically exposed persons (second subparagraph). Under articles 22 and 54 of the Act, politically exposed persons are subject to special measures and enhanced due diligence. With regard to the Consolidated United Nations Security Council Sanctions List, the Ministry of Foreign Affairs transmits lists of the persons concerned to the supervisory authorities.

The obligation to keep documents for a period of 10 years is established in article 35 of the Money-Laundering and Financing of Terrorism Act. Banks that have no physical presence and that are not affiliated with a regulated financial group are not allowed to be based in Burkina Faso (art. 101 of the Anti-Corruption Act). Any correspondent banking relationship with a shell bank is prohibited (art. 52 of the Money-Laundering and Financing of Terrorism Act).

The Anti-Corruption Act establishes a system for the declaration by certain persons of their interests and assets (arts. 7 to 28), and appropriate penalties for non-compliance (arts. 29 and 30). Any public official who has an interest in or signature or other authority over a financial account in a foreign country must report that relationship to ASCE-LC (art. 103 of the Act).

The obligation to report suspicious transactions is established in article 79 of the Money-Laundering and Financing of Terrorism Act. CENTIF receives suspicious transaction reports from persons subject to the reporting obligation. However, most of the reports it receives are from banks. Articles 67 to 69 of the Act relate to the processing of suspicious transaction reports by CENTIF, the blocking of transactions that are the subject of a suspicious transaction report and the action to be taken in response to such reports.

According to article 67 of the Act, when investigations carried out by CENTIF point to facts that may constitute the offence of laundering of the proceeds of crime or the financing of terrorism, CENTIF informs the State prosecutor. The State prosecutor is obliged to prosecute (art. 98 of the Anti-Corruption Act). CENTIF may order the blocking of a transaction that is the subject of a suspicious transaction report for a period of 48 hours (art. 68 of the Money-Laundering and Financing of Terrorism Act).

Measures for direct recovery of property, mechanisms for recovery of property through international cooperation in confiscation, international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Article 104 of the Anti-Corruption Act explicitly provides that the courts have jurisdiction to hear civil actions for the direct recovery of property. Foreign States may be a party to legal proceedings and are subject to the general internal rules of procedure, including with regard to the need to demonstrate a legitimate interest. The capacity to act as a party to legal proceedings includes the capacity to initiate civil action before the national courts in order to establish title to or ownership of property or to claim compensation or damages. *Cautio iudicatum solvi* is required and the foreign State must use a lawyer registered at the local bar.

A confiscation order issued by a foreign court may be enforced under articles 105 and 113 of the Anti-Corruption Act, article 150 of the Money-Laundering and Financing of Terrorism Act and article 20 of the ECOWAS Convention on Mutual Assistance in Criminal Matters. Confiscation upon request for mutual legal assistance is possible on the basis of articles 83, 111 and 112 of the Anti-Corruption Act, articles 128 and 148 of the Money-Laundering and Financing of Terrorism Act and articles 18 and 19 of the ECOWAS Convention. Confiscation of property may be ordered even in the absence of a criminal conviction (art. 106 of the Anti-Corruption Act).

A freezing or seizure order issued by a foreign court may be enforced under articles 107 et seq. of the Anti-Corruption Act, article 147 of the Money-Laundering and Financing of Terrorism Act and article 20 of the ECOWAS Convention. A request for mutual assistance for the purposes of seizure may be executed on the basis of

articles 83 and 107 et seq. of the Anti-Corruption Act and articles 99 et seq. of the Money-Laundering and Financing of Terrorism Act. Provisional measures without prior request may be ordered on the basis of articles 99 and 100 of the Money-Laundering and Financing of Terrorism Act.

The content of requests for mutual legal assistance is determined by the above-mentioned provisions of the Anti-Corruption Act (arts. 111 and 112), the Money-Laundering and Financing of Terrorism Act (art. 139) and the ECOWAS Convention. In addition, under article 151 of the Constitution, the Convention can be directly applied.

Burkina Faso provided a copy of its relevant laws in the context of the review mechanism. Burkina Faso does not make the adoption of confiscation and seizure measures conditional on the existence of a relevant treaty.

Before lifting any provisional measure, the requesting State is given the opportunity to present its reasons in favour of continuing the measure (art. 110, second paragraph, of the Anti-Corruption Act). The rights of bona fide third parties are protected under article 83, second paragraph, and article 111 of the Anti-Corruption Act; articles 147, 150, third paragraph, and 160 of the Money-Laundering and Financing of Terrorism Act; and article 20 (2) of the ECOWAS Convention.

Return and disposal of assets (art. 57)

Burkina Faso can return confiscated property in direct application of the Convention. According to article 115 of the Anti-Corruption Act, confiscated property is disposed of in accordance with the applicable treaties and the legislation in force. That includes article 57 of the Convention. Under article 151 of the Money-Laundering and Financing of Terrorism Act, property confiscated in the territory of Burkina Faso at the request of foreign authorities becomes State property unless an agreement with the requesting State establishes otherwise.

The rights of bona fide third parties and the rights of legitimate owners are protected by the aforementioned articles. Cooperation requests are, in principle, executed free of charge. However, there is nothing to prevent Burkina Faso from deducting reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property.

3.2. Successes and good practices

- The definition of politically exposed persons includes domestic politically exposed persons (art. 52)
- ASCE-LC works with its counterparts in the subregion on the basis of the Convention (art. 59).

3.3. Challenges in implementation

It is recommended that Burkina Faso:

- Consider establishing a body for the recovery of seized and confiscated assets, based on the model of the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC) of France (art. 51)
- Implement, in practice, provisions on asset recovery and, in particular, on confiscation, seizure and freezing (art. 54)
- Provide ASCE-LC with the necessary resources and an adequate mechanism to receive and verify declarations of assets, and consider establishing an electronic declaration system (art. 52 (5))
- Increase the dissemination of information regarding the obligations of persons subject to the requirement to submit suspicious transaction reports, and ensure that those persons fulfil their obligations (art. 58).

3.4. Technical assistance needs identified to improve implementation of the Convention

Burkina Faso indicated that it required technical assistance in the following areas:

- To enhance technological capacities with respect to the detection of proceeds of crime and capacity-building for stakeholders (art. 52)
- To train personnel in the detection and identification of proceeds of crime and in the entire procedure for requesting the return of assets (art. 52)
- Logistical assistance in the context of special investigations (art. 58).

II. Executive summary

Solomon Islands

1. Introduction: overview of the legal and institutional framework of Solomon Islands in the context of implementation of the United Nations Convention against Corruption

Solomon Islands acceded to the Convention on 6 January 2012 and the Convention entered into force on 5 February 2012. Solomon Islands was reviewed in the fourth year of the first cycle of the Implementation Review Mechanism (CAC/COSP/IRG/I/4/1/Add.3).

Solomon Islands achieved self-governance in 1976 and obtained political independence from the United Kingdom of Great Britain and Northern Ireland on 7 July 1978. At independence, Solomon Islands adopted a Constitution pursuant to the Solomon Islands Independence Order 1978. The State operates under a dualist system.

The Constitution is the supreme law and any inconsistent law shall, to the extent of the inconsistency, be void. Section 75 authorizes the National Parliament of Solomon Islands to enact provisions for the application of laws, including customary law and for "peace, order and good governance of Solomon Islands". Acts of the Parliament of the United Kingdom, in force since 1 January 1961, were adopted by Schedule 3 of the Constitution, subject to the Constitution and to Acts of the National Parliament of Solomon Islands.

The principles and rules of common law and equity are recognized in Schedule 3.2 of the Constitution and while the legal doctrine of judicial precedent is used within the Courts of Solomon Islands, any pronouncements from English Courts made after independence are not binding. The absence of comprehensive case examples and statistics frequently limited the review to a legislative compliance only.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Solomon Islands has established a Steering Committee, led by the Office of the Prime Minister and including public sector, civil society and private sector representatives to coordinate the oversight of the National Anti-Corruption Strategy (NACS), which was unanimously endorsed by Parliament in March 2017. NACS focuses on five priority areas and addresses recommendations of the first implementation review cycle and other mandatory provisions of the Convention. NACS has a detailed implementation plan accompanied by a monitoring, evaluation and reporting framework, which would benefit from further elaboration. Principles of good governance and anti-corruption are enshrined also in the National Development Strategies.

The proposed anti-corruption legislation is still to be enacted, although multiple corruption offences already exist in the Penal Code (Sections 91, 258, and 374). There is no central law reform process but each ministry can initiate a review under its purview. The Office of the Ombudsman ("the Ombudsman") has the authority to review the adequacy of administrative procedures and mechanisms.

There is no single anti-corruption agency. The draft Anti-Corruption Bill seeks to establish the Solomon Islands Independent Commission against Corruption. Currently, the Anti-Corruption Investigations Unit within the Royal Solomon Islands Police Force

(RSIPF) leads all anti-corruption investigations. The Ombudsman is tasked with investigating claims of maladministration of public offices, while the Leadership Code Commission (LCC) investigates claims of misconduct of public officials, including conflicts of interest, misuse of official information, and non-disclosure of assets. Both the LCC and the Ombudsman may also initiate investigations at their own initiative. The Office of the Auditor General is responsible for auditing the public accounts.

The Ombudsman is not subject to the direction or control of any person or authority and has an independent budget, with the caveat that the Prime Minister may order an investigation to be stopped for reasons of national security (Constitution, art. 98).

Coordination takes place through the government Integrity Group Forum tasked with improving accountability and promoting integrity among public officials. The Committee for Combatting Corruption, led by the Office of the Ombudsman, provides a forum for senior officials to strategize a more effective and efficient collaborative approach to the prevention of corruption.

Solomon Islands participate in regional initiatives and organizations that assist in the prevention of corruption, including the following: The ADB/OECD Anti-Corruption Initiative; Asia Pacific Group on Money Laundering; Extractive Industries Transparency Initiative; the Pacific Islands Legal Officers' Network; Pacific Islands Forum Secretariat; Pacific Association of Financial Intelligence Units; Pacific Prosecutors Association; Secretariat of the Pacific Community; and the Pacific Association of Supreme Audit Institutions.

Solomon Islands was reminded of its obligation to inform the Secretary-General of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Public sector, codes of conduct for public officials, measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Public Service Commission appoints public officials, including their confirmation, removal and disciplinary control. The public sector hiring and recruitment processes are merit based, transparent, inclusive and accountable to the Public Service Commission (Public Service Commission (Amendment) Regulations 2006, art. 22). Salary scales and entry level of first appointment are based on level of education and are codified (General orders, Chapter E, Sections 1 and 2). An appeals mechanism exists against all human resources decisions (Public Service Commission (Amendment) Regulations 2006, arts. 14, 15, 16). There are no specific procedures for the selection, rotation and training of individuals considered especially vulnerable to corruption.

Permanent Secretaries of government institutions are appointed by the Public Service Commission with the concurrence of the Prime Minister (Constitution Ch. XIV, art. 128). Tenure of office of the Public Solicitor, the Director of Public Prosecutions, the Commissioner of Police and Auditor General is also regulated in the Constitution (Ch. XIV, art. 129).

Some training programmes exist for public service employees. In order for an employee to be selected for training that would lead to qualifications for promotion, a proposal must be made to the Public Service Commission, which is then obligated to ensure that the selection is based on merit (Public Service Commission Regulations, arts. 42, 43).

The criteria for the qualification and disqualification of those standing for elected public office are outlined in the Constitution (arts. 48 and 49), which also includes eligibility criteria to run for Parliament. The Political Parties Integrity Act 2014 established regulations for political parties, including financial reporting requirements, and a commission to monitor compliance. The Political Parties Commission has issued

integrity standards, which apply to all members of political parties (Political Parties Integrity Standards 2014).

A code of conduct, an administrative document to guide the conduct of public officers, exists for all public officers and provides disciplinary measures for noncompliance, including dismissal (Public Service Code of Conduct, p. 6). While the code calls for the reporting of fraud, misconduct, or any other inappropriate behaviour to the responsible officer and prohibits reprisal against those reporting in good faith (p. 10), no measures or systems are in place to facilitate the reporting by public officials of acts of corruption to appropriate authorities nor protection of reporting persons. Some bodies and organizations have their own additional codes. The Government of Solomon Islands has also published information for managers in public service, such as a guide to the disciplinary process.

All public officials, including Members of Parliament, are governed by the Leadership Code (Further Provisions) Act 1999. The Leadership Code requires asset disclosures, including gifts and any directorships in companies as well as government or corporate contracts (art. 8). The Leadership Code Commission has the authority to request additional information regarding asset disclosures and investigate allegations of misconduct (arts. 7, 9 and 10). Violations of the Leadership Code may result in monetary penalties. Also the Penal Code contains a provision on conflicts of interest, which applies to all public sector employees (Cap. 26).

Members of the judiciary and the Director of Public Prosecutions also fall under the purview of the Leadership Code. In addition, documents such as the Magistrates Courts Bench Book 2004 provide ethical principles for the judiciary. Judges can be removed for misconduct, and investigations of complaints are conducted internally by the Registrar with the guidance of the Chief Justice, who makes the final decision on corrective measures. Public prosecutors are subject to the requirements of the Leadership Code and the general code of conduct for public servants. In addition, prosecutors are governed by a practice manual, and the Director of Public Prosecution oversees matters pertaining to training, discipline and the exercise of prosecutorial discretion.

Public procurement and management of public finances (art. 9)

In Solomon Islands, the procurement system is decentralized. No national procurement legislation exists, but the Public Financial Management Act 2013 (PFMA) calls for the Minister of Finance and Treasury to "prepare rules and regulations for procurement," which were promulgated through Chapter 7 of Finance Circular 08-2013. The Ministry of Finance's website contains standard forms for procurement. The Government produced a guide in 2013 entitled the SIG Procurement and Contract Administration Manual. At present, there is no law against fixing prices on public tenders and sole-source procurements make up 10 per cent of total procurement. Additionally, State Owned Enterprises do not have to follow many of the present rules. There is also no system of domestic review and appeal of procurement decisions. NACS calls for new procurement legislation to be drafted and submitted to Parliament by 2019.

Procurements of more than SI$100,000 (approximate equivalent US$12,000) and up to SI$500,000 are required to be approved by a Ministerial Tender Board. Procurements in excess of SI$500,000 must be approved by the Central Tender Board. Competitive tendering is required for all procurement exceeding SI$100,000. Those below SI$100,000 are decided by the Permanent Secretary of the relevant Ministry.

The Finance Minister is required to present estimates of revenue and expenditure each year, based on information provided by all Ministries, in the form of an Appropriation Bill to Parliament for approval (Const., art. 102). PFMA outlines the budgeting process.

The Ministry of Finance and Treasury is responsible for the preparation, management, and monitoring of the annual budget. The Act calls for the national budget for a financial year to be brought before Parliament at least two months before the end of that financial year (PFMA, art. 48). A budget review of the first six months' expenditures is to be published no later than seven months into the financial year. A review of the entire previous year is to be published within four months of the new financial year (art. 52 (1)(b)).

Beginning in 2013, all Ministries were required to establish a Budget Implementation Committee. The role of each Committee was to identify the priority areas for their respective ministries to address, guided by the fiscal and economic outlook provided in the Budget Strategy.

The PFMA also provides for the establishment of the Internal Audit Office. All functions of the Office must be performed in accordance with the International Professional Practices Framework (Public Financial Management (Internal Audit) Regulations 2016, art. 13 (1)). Although resources distributed pursuant to the Constituency Development Funds Act 2013 are subject to expenditure reporting requirements, there is at present no effective mechanism for audit and oversight of these expenditures.

There is no legislation requiring the general maintenance of government financial records for a specified period of time.

Public reporting, participation of society (arts. 10 and 13)

Although identified in NACS, Solomon Islands does not yet have a specific access/right to information legislation in place but remains a general principle.

In Solomon Islands, the general approach to records is that they are available to the public unless they fall under the jurisdiction of legislation governing secrecy or confidentiality of specified records. Solomon Islands has an Official Secrets Act, which makes it an offence to wrongfully communicate secret official information (Section 5). Cabinet documents are considered strictly confidential and a security clearance is needed to have access to them (Solomon Islands Cabinet Handbook 2005, Section 7). According to the National Archives Act, official records submitted for permanent preservation are not to be publicly available for thirty years, unless the Archives Advisory Committee decides otherwise with the approval of the Prime Minister (art. 8 (1)).

Some divisions of Government, such as Parliament and the Ministry of Finance and Treasury, have published information regarding their operations and functions online. However, most ministries do not maintain an official website.

In terms of participation of society in public decision-making processes, article 70 of the Constitution requires that the proceedings of Parliament be held in public. The Standing Orders of Parliament state that members of the public and the press shall be allowed as spectators to sittings of Parliament. As a practice, civil society is heard on pending legislation and policy decisions.

The drafting and implementation of the National Anti-Corruption Strategy involves representatives from civil society as members of the Steering Committee. The Strategy also seeks to maximize citizen input into "the policy process." Additionally, NACS aims to implement anti-corruption curricula at all levels of education.

Solomon Islands regularly marks International Anti-Corruption Day, including through radio awareness-raising programmes on corruption and its effects, and public discussion panels. The LCC occasionally conducts public awareness and outreach programmes to educate the public on the effects of corruption and reporting complaints. Neither the LCC nor the Ombudsman has a functioning website.

Private sector (art. 12)

The Companies Act requires companies to keep certain documentation at its registered office, including all minutes of meetings and resolutions from within the past seven years (art. 112). Directors of a company are required to ensure that correct accounting records are kept (art. 124). The implementation of Companies Act is overseen by the Company Registrar.

The recording of non-existent expenditures, the use of false documents, the intentional destruction of bookkeeping documents, and the entry of liabilities with incorrectly identified objects are all prohibited under the Penal Code, if these acts are committed with the intent to deceive or defraud (art. 305).

Regulations promulgated under the Companies Act guide the preparation of financial statements. Financial statements of public companies must comply with international standards or state how and why they do not comply (Companies Regulations 2010, arts. 9, 10).

Under the National Anti-Corruption Strategy, cooperation with the private sector is essential. Two members of the Steering Committee are representatives from the private sector. NACS would require for private sector investors to implement anti-corruption compliance programmes. Failure to comply would lead to sanctions. Also, any company or person awarded a government tender would also be required to comply with legal and administrative regulations. NACS also calls for the organization of anti-corruption compliance programme training for private sector firms.

Solomon Islands does not expressly disallow the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The Money Laundering and Proceeds of Crime Act 2002 (MLPCA) is a comprehensive regulatory and supervisory regime that established the Anti-Money Laundering Commission, which oversees the regulation of the financial services industry, and the Financial Intelligence Unit (SIFIU), which receives and investigates suspicious transaction reports. The Act requires both financial institutions and cash dealers to report any suspicious transactions to SIFIU (MLPCA art. 14). The definitions of financial institutions and cash dealers were expanded under a 2010 amendment to the MLPCA.

Financial institutions, cash dealers, and legal practitioners assisting clients in certain matters are required by the MLPCA to verify the identity of any customer conducting a transfer of funds. Any type of funds transfer must include originator information (MLPCA 2010, arts. 12, 12A, 12I, 13B).

SIFIU follows an administrative model and is a member of the Egmont Group. SIFIU officials have participated in training and exchange programmes in Cook Islands and Fiji. SIFIU has also entered into MOUs with the FIUs of the Philippines, Indonesia, Chinese Taipei (Taiwan) and Sri Lanka.

The Currency Declaration Act (art. 16) requires a person who enters or leaves Solomon Islands with currency in the amount of SI$50,000 or above (or its equivalent in foreign currency) to make a declaration to an authorized officer in a prescribed form. The Act provides sanctions for both the failure to declare and for false declarations (art. 3 (3)).

Solomon Islands is a member of the Asia/Pacific Group (APG) on Money-Laundering. A self-evaluation of anti-money-laundering and counter-terrorist financing measures was conducted in 2016, and Solomon Islands will undergo the APG 2nd Mutual Evaluation in 2018.

2.2. Successes and good practices

- Adoption of the National anti-corruption strategy at highest level, following extensive stakeholder consultations (arts. 6 and 13)
- The stand-alone budget for the Ombudsman's Office to ensure its financial independence (art. 6)
- Mandatory nature of the Leadership Code and the accountability and oversight provided by the Leadership Code Commission (art. 8)

2.3. Challenges in implementation

It is recommended that Solomon Islands:

- Develop a comprehensive monitoring, evaluation and reporting mechanism for NACS, and allocate adequate resources to ensure its effective implementation and independence (art. 5)
- Adopt appropriate anti-corruption legislation to further implementation of the Convention (art. 5)
- Consider measures to clarify mandates, strengthen independence and allocate adequate resources to bodies charged with preventing corruption, including the Ombudsman's Office and the LCC, and the possible establishment of an Independent Commission against Corruption (art. 6)
- Endeavour to adopt procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions (art. 7)
- Consider establishing measures or systems, including through legislation, to facilitate the reporting by public officials of acts of corruption to appropriate authorities and the protection of persons reporting suspected corruption (whistle-blowers) (art. 8 (4))
- Consider revisions to procurement legislation to address price-fixing and strengthen the competitive process, as well as extend its application to State Owned Enterprises (art. 9 (1))
- Strengthen the systems of public procurement, including through the public distribution of information relating to procurement procedures, invitations to tender and information on the award of contracts, such as through e-procurement processes (art. 9 (1))
- Establish, within public procurement systems, an effective system of domestic review and appeal, and provide legal recourse and remedies to address disputes over adherence to applicable rules and procedures (art. 9 (1))
- Review and take appropriate measures to promote transparency and accountability in the management of public resources distributed pursuant to the Constituency Development Funds Act (art. 9 (2))
- Consider measures to establish requirements for the general maintenance of government financial records for a specified period of time (art. 9 (3))
- Continue to consider comprehensive legislation and administrative measures to strengthen access to information, further to implementation of the National Anti-Corruption Strategy, as well as the establishment of guidelines and tools to enable public institutions to ensure effective and timely access to information (arts. 10, 13)

- Consider measures to enable and strengthen periodic public reporting of activities of government institutions engaged in the prevention of corruption, including the Ombudsman's Office, the Leadership Code Commission and the Ministry of Finance (art. 10)
- Consider taking additional measures to prevent the misuse of procedures regulating private entities regarding licences and permits granted by public authorities for commercial activities, and promote transparency and accountability in royalty payments, in particular in the natural resource extractive industries (art. 12 (2)(d))
- Consider taking additional measures to prevent conflicts of interest in the private sector (art. 12 (2)(e))
- Ensure the disallowance of the tax deductibility of expenses that constitute bribes (art. 12 (4))
- Continue to strengthen participation of society in the prevention of corruption through NACS, and in particular through contributions to the public decision-making processes, public awareness measures and public education programmes (arts. 10, 13)
- Take additional measures to ensure that the relevant anti-corruption bodies are known to the public and that reporting procedures, including anonymously, are established and accessible to the public (art. 13 (2))

2.4. Technical assistance needs identified to improve implementation of the Convention

- Collection of statistical data.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

SIFIU has a mandate to exchange financial intelligence with other States in relation to money-laundering and terrorist financing. MLPCA empowers courts to cooperate with foreign jurisdictions (art. 54) and its article 23 overrides bank secrecy.

The Anti-Money Laundering Commission has the power to authorize the disclosure of any report or information to a foreign governmental department or agency or an international organization that has powers, functions, and duties similar to those of FIU (MLPCA, art. 111). There is no legislative basis for the spontaneous transmission of information to another State party, thus, transmission of information can only be made in response to a formal request.

The Convention is not considered a legal basis for mutual law enforcement cooperation in Solomon Islands, but measures are under consideration to strengthen international cooperation and there are in place memoranda of understanding with several foreign law enforcement bodies, including through the Melanesian Spearhead Group.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions, cash dealers and legal practitioners are required to verify each customer's identity, retain customer records, and conduct ongoing scrutiny of all transactions undertaken (MLPCA 2010, arts. 12, 121).

The Financial Institutions Act requires the Central Bank to take numerous measures to ensure the legitimate operation of all financial institutions, including correspondent banking services (art. 12D), prior to the issuance of licences to operate. There is, however, no requirement that a bank or financial institution maintain a physical presence in Solomon Islands, nor is there a legal definition of shell banks. Nevertheless, the non-binding SIFIU Guidelines expressly advise financial institutions to refuse to engage in a banking relationship with an institution that has no physical presence.

The 2010 amendment to the MLPCA expanded the definition of "politically exposed persons" to encompass both individuals in Solomon Islands and those in other States. Financial institutions, cash dealers and legal practitioners are required have risk management systems that can determine whether a customer is a politically exposed person. If so, they must take additional monitoring actions (art. 12C (1)(c)).

Although the Leadership Code requires certain categories of public officials to adhere to a financial disclosure system, there is no legislative or other provision for sharing such information with competent authorities of other States parties when necessary to investigate, claim and recover proceeds of corruption offences, other than upon issuance of an order by a court of competent jurisdiction. Although the financial disclosure system requires disclosure of all interests in financial accounts and property held in foreign countries, there is no requirement that appropriate records be kept for such accounts or property.

The powers of SIFIU to obtain information, records and reports from banks and covered institutions are set out in section 11H of MLPCA. Section 11K further authorizes the examination of such records. Section 11H (2)(h) provides that the powers of the Unit include acting on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority, or auditing authority of another country for purposes of the MLPCA.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

There is no legislation to permit other States parties to stand before Solomon Islands courts to claim damages or otherwise receive compensation for the damages incurred, although States can bring a direct action to claim property or damages if represented by an attorney licensed to practice in Solomon Islands.

Section 13 of the Mutual Assistance in Criminal Matters Act (MACMA) provides for the enforcement of foreign confiscation or restraining orders. Solomon Islands recognizes all foreign confiscation orders as long as they are in force in the foreign country. The Act makes no distinction between conviction-based and non-conviction based confiscation orders.

The Attorney General has the authority to refuse the mutual legal assistance request, in whole or in part, on the grounds that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of Solomon Islands on such terms and conditions as he thinks fit (section 4, MACMA). A request may also be refused if the Attorney General does not receive sufficient and timely evidence or if the property is of a de minimis value.

Section 7 of MACMA details that a request for confiscation should contain details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State; and in the case of a request to restrain or forfeit assets, details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order.

Solomon Islands does not require a treaty to provide cooperation for purposes of confiscation. As a member of the Commonwealth, the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth could, in principle, be applied by and to Solomon Islands, but has not been used to date.

The Director of Public Prosecutions may request an order to freeze or seize property in response to a request by a State party that provides a reasonable basis to do so, subject to an eventual order of confiscation (Section 49, MLPCA). Sections 70, 75 and 77 of MLPCA authorize the Attorney General to take measures, upon request, to assist a foreign State in locating property in Solomon Islands believed to be the proceeds of a serious crime committed in that State.

Solomon Islands furnished the relevant laws in the course of the review process. The rights of bona fide third parties are protected by section 36 of MLPCA.

There is no minimum value threshold for the provision of assistance. Solomon Islands does not use the Convention as a legal basis for international cooperation. There is a duty to consult the requesting State, section 4 (2)(c) MACMA, before postponing a request on the grounds that it would interfere with an ongoing investigation or proceeding in Solomon Islands.

Return and disposal of assets (art. 57)

Although Solomon Islands has had no international asset recovery experience, the legal framework is in place to enable appropriate measures to be taken. Section 34 of MPLCA provides that where property ordered to be confiscated is registered property, the property vests in the Government of Solomon Islands in equity but not vest in the Government of Solomon Islands at law until the applicable registration requirements have been complied with; and the Director of Public Prosecutions has the authority to register the Government of Solomon Islands as owner of the property, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

Section 36 of MLPCA safeguards the rights of bona fide third parties. Section 36 gives any person who claims an interest in the property subject to confiscation to apply to the court for an order declaring the nature, extent and value at the time the order was made of the person's interest. "Person" is defined to include any public body, company or association, and any body of persons corporate or unincorporate (Interpretation and General Provisions Act, art. 16 (1)). If the confiscation order has already been issued and executed, the competent court shall direct that the property or part thereof to which the interest of the applicant relates be returned to the applicant; or an amount equivalent to the value of the interest of the applicant be paid to the applicant.

Although there is no legislative basis to enable the waiving of the requirement of a final judgment in the requesting State, assets can still be returned upon a sufficient showing of a reasonable basis for ownership by another State party through MACMA.

Solomon Islands has and would bear the ordinary costs associated with executing a mutual legal assistance request. Moreover, consultations would take place with the requesting State if the expenses to be incurred would be of a substantial or extraordinary nature. There are no present bilateral or multilateral agreements between Solomon Islands and other States.

3.2. Successes and good practices

- Solomon Islands allows non-conviction based confiscation, also based on foreign orders and requests (art. 54).

3.3. Challenges in implementation

It is recommended that Solomon Islands:

- Require financial institutions to maintain a physical presence in Solomon Islands and be affiliated with a regulated financial group in order to obtain a licence to operate (art. 52 (4))
- Consider taking additional measures to permit competent authorities to share financial disclosure information obtained pursuant to the Leadership Code with other States parties (art. 52 (5))
- Consider measures to require public officials to disclose any interest or signature or other authority related to financial accounts in a foreign country, and maintain appropriate records related to such accounts (art. 52 (6))
- In view of the dualist nature of Solomon Islands, ensure the required domestication process for the Convention as a legal basis for mutual legal assistance and international cooperation for purposes of confiscation and asset recovery (arts. 55 (6) and 59)
- Consider granting legal authority to the Attorney General to proactively transmit information to a foreign competent authority in relation to asset recovery, without a prior request, where such information could assist in initiating or carrying out investigations, prosecutions or judicial proceedings of Convention offences (art. 56)

3.4. Technical assistance needs identified to improve implementation of the Convention

- Collection of statistical data.